Bickerstaff, Heath & Smiley, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

SAN JACINTO CENTER, SUITE 1800
98 SAN JACINTO BOULEVARD
AUSTIN, TEXAS 78701-4039

512/472-8021 FAX: 512/320-5638

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VIA FEDERAL EXPRESS

Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: DA 95-374; CC Docket No. 94-97. Phase I; In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport

Dear Sir:

Enclosed for filing in the above-referenced proceeding are the original and seven (7) copies of the Opposition of Kansas City Fibernet, L.P. to Direct Case of Southwestern Bell Telephone Company. Both ITS and the Tariff Division are being provided with copies of this letter and the enclosed Opposition via overnight delivery service. All parties of record are being served via U.S. Mail, postage prepaid.

Please place your file-mark on the extra copies of this letter and the Opposition and return the same to me in the self-addressed, preposted envelope that is enclosed for your convenience.

If you have any questions concerning this filing, please call me. Thank you for your assistance with this matter.

Sincerely,

Robin A. Casey

Robin A. Casey
Attorney for Kansas City Fibernet, L.P.

cc: ITS (Via Federal Express)
Ms. Geraldine Matise, Common Carrier Bureau-Tariff Division (Via Federal Express)
Mr. James D. Schlichting (Via Federal Express)
All Parties of Record (Via U.S. Mail)
(w/encl.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	§	DA 95-374
	§	
Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport	§ § § § § § §	DOCKET FILE COPY ORIGINAL CC Docket No. 94-97. **Phase I**

OPPOSITION OF KANSAS CITY FIBERNET, L.P.
TO DIRECT CASE OF SOUTHWESTERN BELL TELEPHONE COMPANY

Kansas City Fibernet, L.P. (Fibernet), pursuant to the Designation Order released February 28, 1995 by the Common Carrier Bureau (Bureau),[1] hereby submits its Opposition to the Direct Case filed by Southwestern Bell Telephone Company (SWBT) in this proceeding on March 21, 1995. Since Fibernet operates only in SWBT's service area, it will not respond to the direct cases filed by other local exchange carriers (LECs).

I.

INTRODUCTION

Fibernet is a provider of competitive access services that is currently physically collocated with SWBT at its McGee central office in Kansas City. Fibernet has applied for virtual collocation arrangements at SWBT's McGee and Corporate Woods central offices in Kansas City. As stated in the Petition to

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[1] Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport., CC Docket No. 94-97, Phase I (DA 95-374), Order Designating Issues for Investigation, (Com. Car. Bur., released February 28, 1995) (Designation Order).

Reject or Partially Suspend the Virtual Expanded Interconnection Service Tariffs filed by Time Warner Communications in Transmittal Nos. 818 and 819, et al., Fibernet has expended significant financial resources in attempting to establish interconnection arrangements with SWBT in Kansas City.[2] The unreasonable rates SWBT proposed in its interim and permanent virtual collocation tariffs, however, would make interconnection cost prohibitive for interconnectors like Fibernet.

As the Commission recognized in its Virtual Collocation Order, increased competition among interstate special access and switched transport service providers should increase customer options, reduce rates, and speed the introduction of new technologies, and thereby stimulate economic growth.[3] The Commission also observed that, although physical collocation is the optimal means through which to realize these benefits, virtual collocation also produces these benefits and is in the public interest.[4] Therefore, the Commission ordered the Tier 1 LECs to file tariffs implementing the new mandatory virtual collocation policy[5] that contain rates based on the direct costs of providing expanded interconnection plus a

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2 Fibernet is owned by Time Warner Communications and and TCI.

3 Expanded Interconnection with Local Telephone Facilities; CC Docket 91-141; Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994), appeal docketed sub nom., Southwestern Bell Telephone Company v. FCC, Case No. 94-1547 (D.C. Cir. Aug. 10, 1994) (Virtual Collocation Order), para. 9.

4 Id. at para. 10.

5 Id. at paras. 3, 39.

"reasonable" amount of overhead costs.[6] The Commission directed the LECs not to set rates at levels that would recover a greater share of overheads in rates for expanded interconnection services than they recover in rates for comparable services, absent justification.[7]

The Commission placed the burden of meeting its overhead loading standard on the LECs. In discussing its review of the LECs' rates in its Tariff Suspension Order, however, the Bureau stated that it found substantial differences between the proposed loadings for expanded interconnection services and those currently applied to the LECs' comparable services.[8] To remedy this anti-competitive aspect of the rates proposed by certain LECs, including SWBT, the Bureau ordered the application of Rate Adjustment Factors (RAFs) that would reduce overhead loadings to a level equal to the loadings LECs give their most favored DS1 or DS3 customers.[9]

The Bureau correctly recognized that an average overhead loading standard, such as that used by SWBT, does not preclude a LEC from employing discriminatory practices.[10] Fibernet, therefore, supports the Bureau's conclusion that SWBT's overhead loadings must be reduced. SWBT's rates properly ought to be based

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6 Id. at para. 121.

7 Id. at para. 128.

8 Ameritech Operating Companies et al., CC Docket No. 94-97, Order, DA 94-1421 (released Dec. 9, 1994) (hereafter the "Tariff Suspension Order").

9 Id. at para. 9.

10 Id. at para. 23.

on a loading factor which is no higher than that used in determining the rates of comparable services made available to its most favored customers. At minimum, the RAFs prescribed by the Bureau in its Tariff Suspension Order should be maintained; moreover, wherever cost data support a further reduction, that reduction should be required.

II.

DENIAL OF ACCESS TO SWBT'S COST SUPPORT RENDERS IT IMPOSSIBLE FOR COMPETITORS, INCLUDING FIBERNET, TO ANALYZE SWBT'S DIRECT CASE AND PROPOSED RATES FOR VIRTUAL COLLOCATION SERVICE

As an initial matter, Fibernet wishes to express its extreme frustration with SWBT's manipulation of the regulatory process, which has prevented Fibernet and other interested parties from engaging in a meaningful review and analysis of SWBT's virtual collocation rates. Even though SWBT's tariff and proprietary cost support data were filed six months ago and the Bureau subsequently determined that parties willing to sign a protective agreement should be permitted access to SWBT's cost support, to date, no party has been allowed such access because SWBT appealed the Bureau's ruling and the Commission has not acted on SWBT's application for review. Therefore, Fibernet is forced to respond to SWBT's direct case, much of which relies upon proprietary cost data,[11] in the dark.

The rates it pays for interconnection with SWBT are of critical importance to Fibernet. Although it operates only in one

[11] See, e.g., Direct Case of Southwestern Bell Telephone Company (hereafter "Direct Case"), Appendices 2, 3, and 4.

city and does not have the revenue and resources of the larger CAPs that operate on a national basis, this issue was so important to Fibernet that last fall it retained legal counsel and an economic expert to assist it in evaluating the reasonableness of SWBT's virtual collocation tariff. However, without the ability to review SWBT's underlying cost studies and methodologies, Fibernet's experts cannot conduct a meaningful analysis of the reasonableness of SWBT's rates. Protective agreements have long been used in state regulatory proceedings to protect confidential and proprietary cost information. Fibernet hopes that the Commission will act soon to uphold the Bureau's finding that SWBT's cost support should be made available to parties willing to abide by the terms of a protective agreement. To the extent it is ultimately allowed access to such information, Fibernet reserves the right to supplement this response to SWBT's direct case.

III.

THE APPLICATION OF RAFS IS AN APPROPRIATE ACTION THAT WILL ENCOURAGE ECONOMICALLY EFFICIENT COMPETITION

SWBT argues that the Bureau's application of RAFs is unwarranted, and asserts that "[t]he net result of the Virtual Collocation Tariff [Suspension] Order is to arbitrarily slash the overhead that can be recovered by interconnection arrangements."[12] Although the Tariff Suspension Order reduced the LECs' rates, Fibernet disagrees with SWBT's view that the Bureau's decision was in any way "arbitrary." To the contrary, the Bureau's decision-

12 Direct Case, p. 3.

making process, as clearly outlined in the Tariff Suspension Order, represents a reasonable approach to setting rates for interconnection that will facilitate economically efficient entry into the marketplace.

Specifically, the Bureau's decision recognizes the potential problem of a "price squeeze" in the market for access services. This problem was described by MFS and cited in the Tariff Suspension Order: "a wholesale supplier, who also sells at retail, charges high rates to its wholesale customers so that they cannot compete effectively with the supplier's retail rates."[13] Fibernet must obtain interconnection services from SWBT in order to offer quality, efficient access services to its customers (and potential customers). If rates for these services are set at a level that includes an excessive contribution to SWBT's overhead costs (when compared to the relevant "retail" access rates), a price squeeze will successfully be created and equally-efficient competitors,[14] including Fibernet, will be unable to compete effectively. From the end users' perspective, such a price squeeze will deny them access to the services of multiple providers, at potentially higher quality and lower rates. The Bureau's decision to apply RAFs to SWBT's unjustified, extremely high overhead loadings, therefore, is economically valid and constitutes sound public policy; it is in no way "arbitrary" as argued by SWBT.

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13 Tariff Suspension Order, para. 13.

14 The term "equally-efficient competitor" is intended to mean those firms whose efficiency of operation is equal to, or greater than, that of SWBT.

The Bureau's own description of the process it followed in establishing the overheads to be applied shows that its actions were consistent with both the legitimate financial needs of the LECs and the above-discussed public policy. The process it followed included a review of the overhead loadings applied by the LECs to virtual collocation service and to comparable DS1/DS3 rates. The Bureau's description follows:

> we requested that LECs identify the overhead loadings applied to each of these services and provide the underlying cost data used in calculating the loadings.[15]
>
> * * * * *
>
> Next, we determined whether any LECs had chosen to use uniform overhead loadings for all of their DS1 and DS3 services. The submitted overheads data show that none has done so. On the contrary, all LECs report wide variations in the loadings applied to their comparable DS1 and DS3 services.[16]
>
> * * * * *
>
> [T]he third step in our analysis was to compare the loadings assigned to virtual collocation service with those assigned to the comparable DS1 and DS3 services and to determine if the observed differences have been justified. [Footnote omitted.] The information submitted by the LECs in support of their proposed rates shows substantial differences between the loadings factors they propose to apply to their charges for expanded interconnections services and those currently applied to comparable services.[17]
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> * * * * *

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15 Tariff Suspension Order, para. 18.

16 Tariff Suspension Order, para. 19.

17 Tariff Suspension Order, para. 20.

> Moreover, none of the LECs attempted to show that these wide variations in loadings are due to differences in the overhead costs actually incurred by individual services. On the contrary, the LECs generally concede that this is not the case.[18]

The Bureau found not only that the overhead loadings used to develop the rates for virtual interconnection and comparable DS1/DS3 services are not consistent, but also that the differences are not due in any way to cost causation (i.e., the matching of costs to the services, or components of services, that "cause" the LEC to incur the cost). The LECs, including SWBT, stated that they ignored this fundamental economic principle in favor of allocating overheads "to a particular service depend[ing] primarily on *market conditions*." (Emphasis added.)[19] From the LECs' point of view, distributing overhead costs (and setting rates) based on "market conditions" is highly beneficial. It can result--if permitted--in the allocation of additional overhead costs to the rates for services facing little potential competition (while minimizing overhead costs allocated to the rates for services facing actual or potential competition), and the allocation of additional overhead costs to the rates for interconnection services (while minimizing overhead costs allocated to the rates for those LEC-provided services against which the interconnector must compete).

Without appropriate restrictions or safeguards, a system of allocating overhead costs based on the LECs' marketing strategy can

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18 Tariff Suspension Order, para. 21.

19 Id.

be expected to result in a marketplace dominated by the incumbent carrier. As accurately observed by the Bureau:

> It further appears that the Commission's policy of promoting competitive entry into the local exchange market would be frustrated by the practice of assigning high overheads to the LEC facilities upon which interconnectors rely to provide competitive services while assigning low overheads to the very services against which interconnectors are trying to compete.[20]

To avoid this outcome, the Bureau established adjustments to the proposed rates based on a "most favored customer" policy to ensure the equitable treatment of interconnectors:

> The adjustments will extend to interconnectors the same treatment of overhead assignment that the LECs give their most favored DS1 or DS3 customers. In this way, the adjustments will prevent unreasonable discrimination against the interconnectors that seek to compete with the LECs in the interstate access service market.[21]

The Bureau's application of RAFs to SWBT's proposed rates is neither an arbitrary adjustment, nor the result of an arbitrary decision-making process. In direct contrast to SWBT's arguments, both the decision to require adjustments and the magnitude of the adjustments are fundamentally sound from both an economic and public policy perspective.

In addition to its unfounded assertion that the Bureau's rate adjustment process is somehow "arbitrary," other arguments were offered by SWBT to support its position that the public policy-

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[20] Id. at para. 22.

[21] Id. at para. 27.

based approach taken by the Bureau should be abandoned. These arguments are addressed below.

A. Impact of the Required Rate Adjustments on the Market, SWBT, and Customers.

SWBT contends that the RAFs prescribed by the Bureau will negatively impact the market for access services, SWBT and SWBT's customers. As SWBT puts it, "without appropriate recovery of overheads, interconnectors are given an unfair price break. The Bureau has in effect attempted to take business away from one company and give it to others by handing unwarranted advantages to the LEC competitors at the expense of the LEC and its customers."[22]

While Fibernet agrees that the appropriate recovery of overheads is vital, it finds the remainder of SWBT's argument baseless. Absent the RAFs required by the Bureau, it is SWBT that will have an "unfair" advantage. It is SWBT that would be able to apply overhead costs to rates based on its "strategic marketing objectives," thereby creating effective economic barriers to entry into the interstate access market.[23]

SWBT's statement shows an apparent confusion regarding the operation of competitive markets. It is impossible for the Bureau, as SWBT has argued, to "take business away from one company and give it to others." Clearly, the Bureau does not dictate to a customer which carrier (or carriers) he or she will utilize for access services. The effect of the Bureau's action in fact is

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[22] Direct Case, p. 3.

[23] SWBT's proposed rates, prior to the application of the required RAFs, create such a barrier.

exactly the opposite; by establishing more rational overhead loadings, the Bureau permits economically efficient entry to take place and, ultimately, an effectively competitive marketplace to develop. Customers will have increased freedom of choice regarding the supply of these services. The appropriate goal of regulation is to create an environment in which efficient competitors can compete on an equal footing to the benefit of the end users of the service in question. The Bureau's policy, and the resulting application of RAFs, will help to create such an environment.

SWBT's reference to "*its* customers" in its argument also indicates its confusion regarding competition. Apparently SWBT's historical role as monopoly provider prevents it from realizing that it does not "own" the end users of access services. As a result, it also fails to recognize that one of "*its* customers" may in fact be better off receiving quality service at a competitive price from a competitor.

SWBT must ultimately understand that during the transition process from a market dominated by a single supplier to a market characterized by economically efficient competition, the incumbent provider will likely lose some of "*its* customers." The rate adjustments required by the Bureau will not "take" these customers from SWBT, but rather will help to create an environment in which these customers will be liberated to make their own choice among multiple competing suppliers.[24]

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[24] SWBT's confusion regarding the operation of competitive markets is also evident in its statement at page 7 of its Direct Case that "given that SWBT's Megalink Custom optical offerings have been in effect for years (cont'd)

If SWBT wishes to retain customers, it should focus on ways to make its service more attractive, rather than expending its effort creating rate structures designed to impede the development of economically efficient competition.

B. Comparable Services and the "Most Favored Customer".

SWBT also attacks the Bureau for adopting a "most favored customer" policy, arguing that it is unclear who the truly "most favored" customers actually are.[25]

SWBT goes on to argue that the most favored customers are those which are most profitable:

> [C]ompetitors purchasing SWBT interconnection services are likely to target their marketing efforts at large customers purchasing multiple SWBT special access services at discounted per circuit prices that nevertheless reflect relatively high contribution margins. There will likely be little competitive activity centered around those customer accounts the Commission labels "most favored" (i.e., relatively small businesses leasing a single special access circuit at a price which is not discounted and reflects a relatively low contribution margin). Competitors would aim their marketing efforts toward those SWBT

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and have current demand, there is no reason to believe that the rates charged are unreasonable." Relying on a theory that any rate that at least some customers are willing to pay (in the absence of other suppliers)--no matter how high--is inherently "reasonable" is unlikely to prove to be an effective strategy in a competitive market.

[25] At pages 7-8 of its Direct Case, SWBT points out that the rates paid by end users for DS3 services are based on both direct costs and an allocation of overheads, resulting in a different "per DS3" rate for end users with different volumes of traffic. SWBT then attempts, based on this rate differential, to redefine the concept of "most valued customer." While Fibernet acknowledges that different "per DS3" rates exist, it disagrees that SWBT's argument is in any way relevant to the issues at hand. It is the level of SWBT's overhead loadings, not its direct cost of providing the components of various services, that are at issue in this proceeding. An effective "most valued customer" policy to prevent anti-competitive pricing should focus, as the Bureau has done, on the relative level of overhead loadings; the price paid by various end unsers on a "per DS3"-equivalent basis is simply not relevant.

> accounts that provide higher than average contribution toward overhead.[26]

This argument fails as well. It is reasonable to expect that competitors entering a market will first focus on those customers or services that represent the highest contribution and then, over time, expand their efforts to all segments of the market. Such a strategy is economically efficient and has been successfully followed, to the ultimate benefit of consumers, in other telecommunications markets. *The original rate structure proposed by SWBT, however, would discourage such expansion, ensuring that only the scenario it describes will happen; i.e., competitors entering the market will offer services to the large, high contribution end users and by necessity ignore the smaller, low contribution end users.*

As SWBT readily admits, it "determined the share of overheads recovered by its rates for comparable services by using a simple average of all DS1 and DS3 recurring rate elements."[27] This "simple average" level of overheads was applied to the rates for interconnection. An equally efficient interconnector paying rates that include average overheads could only offer a competitively priced service (while recovering its costs) to those end users who were purchasing a SWBT-provided service with rates that contain a higher than average contribution to overhead. Conversely, an equally-efficient competitor could never offer a competitively

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[26] Direct Case, pp. 8-9.

[27] Direct Case, p. 2.

priced service (while recovering its costs) to an end user who was purchasing a SWBT-provided service with rates that contain a lower than average contribution.

This effect of SWBT's originally proposed rate structure should not be ignored. If the benefits of competition in the interstate market for access services is to ultimately extend beyond the largest end users to include small businesses, interconnection rates must be set on the basis required by the Bureau: namely, each rate should include no more contribution to overhead than the SWBT-offered rate element with the lowest level of contribution.

Maintaining the policy enunciated by the Bureau will have two important impacts on the market: 1) removal of an economic barrier to entry, making the development of competition possible, and 2) creation of a competitive market that benefits all access customers, rather than just high volume end users.

C. The Purported Distinction Between "Services" and "Rate Elements."

SWBT argues that the application of the "most favored customer" policy required by the Bureau is flawed because it focuses on the level of contribution to overhead of SWBT's comparable rate elements, rather than comparable services. Fibernet disagrees.

As SWBT correctly notes, "the Bureau searched through all of SWBT's DS1 and DS3 rate elements to find the one rate element with the lowest overhead loading to be used for DS1 and DS3 virtual collocation. It then directed SWBT to assign these lowest levels of overhead to all virtual collocation rate elements."[28] As described in detail above, Fibernet fully supports such an approach as an effective means of implementing the "most favored customer" policy articulated by the Bureau. SWBT complains of this approach, however, arguing that it is unreasonable because "the problem with this method is that it does not identify a comparable service."[29]

SWBT's attempt to draw a meaningful distinction between "rate elements" and "services," repeated in Appendix 5, consists of little more than a play on words. Contrary to SWBT's arguments, there simply is no supportable "bright line" distinction to be drawn. While the industry commonly refers to the purchase of "services," LEC customers truly are purchasing rate elements. "Services" exist only as a collection of rate elements.

While some rate elements must be purchased in conjunction with others for technical reasons, the bundling of rate elements into services is purely an artificial construct created by the LECs through the tariffing process.[30] Ultimately, it is the willingness of the LEC to permit end users to purchase a rate element on an unbundled (stand alone) basis that determines whether the rate element is considered a "service."

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[28] Direct Case, p.5. Fibernet recognizes that SWBT's characterization, while generally accurate, is not fully consistent with para. 25 of the <u>Tariff Suspension Order</u>.

[29] <u>Id</u>.

[30] In many cases, customers would be better off, <u>i.e.</u>, could receive quality service at a lower total cost, if such bundling of rate elements into "services" did not take place.

SWBT describes an example related to special access services that it asserts "clearly indicates individual rate elements are not "services."[31] SWBT ignores the fact that rate elements can become "services" by a mere lifting of tariff restrictions (either unilaterally by the LEC or through the requirement of a regulator). For example, while discussing its example of special access, SWBT ignores the fact that a former rate element of switched access--local switching--became a "service" after the restructure of local transport.

Except for limited technical exceptions, the rate elements within the LECs' current tariffs could become stand alone "services" tomorrow if the bundling restrictions (including use and user restrictions) were removed. Clearly, the Bureau's focus on rate elements is not made inappropriate simply because SWBT continues to bundle rate elements (often to the detriment of end users) into tariffed "services."

Fibernet notes that SWBT offers no tariffed "service" that is identical to the configuration used by interconnectors for virtual collocation. SWBT's customer configurations using electronic channel terminations typically require two sets of electronics--one at the SWBT central office and one at the customer premise--plus the connecting fiber. Interconnectors require electronics only in the SWBT central office and they supply the fiber between their locations and the central office. Although SWBT's optical channel terminations are more similar to the configuration used by

[31] Direct Case, Appendix 5, pp. 1-3.

interconnectors, these terminations still require that SWBT provide fiber and some electronics at the customer premise.

Moreover, even at the rates prescribed by the Bureau's RAFs, interconnectors face an interconnection cost that is roughly double the cost of acquiring and installing the equipment themselves.

The Bureau correctly looked to rate elements when determining the appropriate level of overhead loadings. SWBT's attempt to persuade the Bureau that a real distinction exists between rate elements and services has no basis in fact and should be rejected.

D. Inclusion of Promotional Offerings and Other Discounted Rates.

In opposing the Bureau's decision to consider discounted offerings,[32] SWBT argues that promotional offerings of comparable services should not be considered because "a promotional offering is generally considered to be of limited duration and is therefore not reflective of the typical availability of the service . . . ."[33] Such an argument ignores the ability of a LEC to use a promotional offering, or even just the potential to make a promotional offering, as an effective barrier to entry.

Potential equally-efficient competitors will not enter the market if they know that SWBT can respond with a "promotional offering" or other discounted rate that is below what the competitors can match (i.e., a rate that includes a lower level of contribution to overhead costs than is included in the rate for

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32 Tariff Suspension Order, para. 12.

33 Direct Case, Appendix 1.

interconnection). SWBT need not actually decrease its rates; just the possibility of an anti-competitive response will effectively prevent entry.

If promotional and discounted rates are not included when applying the "most favored customer" policy, competitors will be paying rates for interconnection set at a level that recovers more overhead costs than the overheads being recovered in the rates charged by SWBT to an end user. This precise scenario, as described in detail above, is the definition of an anti-competitive price squeeze. To avoid this possibility, it is essential that the Bureau consider all rates, including promotional offerings, term and volume discounts, and other discount rates, when determining the appropriate level of overhead loadings for interconnection rates.

As a practical matter, future SWBT promotional offerings--and the level of overhead loadings in the rates--are unknown. A more administratively simple (and equally effective) means of addressing this issue is to establish rates for interconnection at the lowest known level of loadings for a comparable rate element,[34] and require that this level of overhead loading be the minimum to be included in all future promotional, term and volume discounts, and other discounted rates offered by SWBT.

Without such a requirement, end users of access services will be faced with the worst of both worlds. Without potential

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[34] The term "comparable rate element" as used here is intended to be consistent with the establishment of rates as described in the Tariff Suspension Order, para. 25.

competitors entering the market, out of fear that their rates can be significantly undercut by SWBT's promotional rates, end users will have no ability to select from among multiple suppliers due to this barrier to entry created by the *potential* for anti-competitive pricing. At the same time, SWBT will have no incentive to improve its service or lower its rates and end users will have no choice but to purchase service from SWBT at the higher established rates.

E. Overhead Loadings on Nonrecurring Charges.

As pointed out in the Petition to Reject or Partially Suspend Virtual Expanded Interconnection Service Tariffs, filed by Time Warner Communications Holdings, Inc.:

> *Southwestern Bell's methodology explicitly assumes that the best available forecast of the useful life of interconnector designated equipment is one month, and therefore the full recovery of capital costs must be accomplished in the rates paid by interconnectors during the first month of service.* Such an assumption is clearly not anyone's--including Southwestern Bell's--best estimate of the useful life of this equipment, and thus is completely without economic justification. Southwestern Bell's proposed nonrecurring rates, based on the costs generated by this methodology, create an insurmountable economic barrier to entry and are extremely anti-competitive.

(Emphasis in original.) To recover capital costs and overhead loadings through nonrecurring charges, results in up-front costs that will effectively exclude all but the largest interconnectors from the provision of access services.

The Bureau specifically directed the LECs to explain why the assignment of overhead loadings to nonrecurring charges associated with virtual collocation services is reasonable, and to explain whether overhead loadings are recovered through any nonrecurring charges associated with comparable DS1/DS3 services.[35] SWBT's Direct Case consists of nothing more than conclusory statements and fails to respond to the Bureau's information requirement.

SWBT's only justification for assigning overhead loadings to nonrecurring charges is that "[t]raditionally, overhead costs are recovered by rate elements that recover capital costs."[36] Thus, it appears that historical practice regarding the rate structure used to recover capital costs underlies SWBT's decision to recover its overhead loadings through nonrecurring charges.

But, SWBT's capital costs are not typically recovered through nonrecurring charges.[37] For its own comparable DS1 and DS3 services, SWBT uses a rate structure that recovers capital costs and overhead loadings through recurring charges. As SWBT explained in describing overhead loadings for its comparable DS1/DS3 services:

> [i]n the case of IDE NRC's that reflect the material cost of the equipment[,] the overhead factor was applied to the cost to determine the rate. This is appropriately compared to DS1/DS3 services which reflect overhead, capital cost, and monthly expense <u>in the recurring rate</u>.
>
> The treatment of overhead loading of SWBT's DS1/DS3 service and virtual collocation elements is a function of the rate structure. <u>The rate structure difference does not</u>

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35 Designation Order, para 24.

36 Direct Case, Appendix 9, p. 1 of 1.

37 In fact, to our knowledge, the recovery of capital costs via nonrecurring charges for a tariffed service is unprecedented.

> increase the amount of overhead collected on virtual collocation arrangement[s]. In both cases, the overhead is recovered where the capital costs are recovered.[38]

(Emphasis added.)

Nowhere does SWBT explain why the rate structure difference for virtual collocation services and the DS1/DS3 services exists. Fibernet can only conclude that, at bottom, the distinction rests on whether SWBT *chooses* to establish a rate structure that places capital costs and, therefore, overheads in nonrecurring charges. Absent any cogent justification for including overhead loadings in nonrecurring charges, the only appropriate response is to reject such loadings.

IV.

CONCLUSION

Fibernet applauds the Commission's and the Bureau's efforts to make SWBT's rates for virtual collocation service reasonable. For the reasons stated herein, Fibernet asserts that SWBT has failed to justify the overhead loadings contained in its proposed interim and permanent tariffs. Fibernet urges the Bureau to require SWBT's rates to be based on a loading factor which is no higher than that used in determining the rates of comparable services made available to its most favored customers. At minimum, the RAFs prescribed by the Bureau in its Tariff Suspension Order should be maintained;

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[38] Id. at Appendix 12, p. 1 of 1.

moreover, wherever cost data support a further reduction, that reduction should be required.

Respectfully submitted,

BICKERSTAFF, HEATH & SMILEY, L.L.P.
98 San Jacinto Blvd., Suite 1800
Austin, Texas 78701-4039
(512) 472-8021 (Telephone)
(512) 320-5638 (Facsimile)

BY: ______________________
ROBIN A. CASEY
SUSAN C. GENTZ

ATTORNEYS FOR KANSAS CITY
FIBERNET, L.P.

DON J. WOOD
4985 Agate Drive
Alpharetta, GA 30202
(404) 475-9971 (Telephone)
(404) 475-9972 (Facsimile)

ECONOMIC CONSULTANT FOR
KANSAS CITY FIBERNET, L.P.

April 3, 1995

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of Kansas City Fibernet, L.P. to Direct Case of Southwestern Bell Telephone Company has been sent via U.S. Mail, postage prepaid, to all parties of record on this 3rd day of April 1995.

ROBIN A. CASEY

SERVICE LIST
CC DOCKET NO. 94-97

Mr. Robert M. Lynch Mr. Durward D. Dupre Mr. Thomas A. Pajda Southwestern Bell Telephone Co. One Bell Center, Ste. 3520 St. Louis, Missouri 63101 314/235-2507	SOUTHWESTERN BELL TELEPHONE COMPANY
Mr. Andrew D. Lipman Mr. Jonathan E. Canis Swidler & Berlin Chartered 3000 K Street, N.W., Ste. 300 Washington, D.C. 20007-5116	MFS COMMUNICATIONS COMPANY, INC.
Mr. Brian Conboy Mr. John L. McGrew Ms. Melissa E. Newman Wilkie, Farr & Gallagher Three Lafayette Centre 1155 21st Street, N.W. Suite 600 Washington, D.C. 20036	TIME WARNER COMMUNICATIONS HOLDINGS, INC.
Mr. J. Manning Lee Vice President - Regulatory Affairs Teleport Communications Group, Inc. 2 Teleport Drive, Suite 300 Staten Island, New York 10311	TELEPORT COMMUNICATIONS GROUP, INC.
Mr. Richard J. Metzger Pierson & Tuttle 1200 19th Street, N.W., Ste. 607 Washington, D.C. 20036	ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES
Ms. Kathleen Wallman Chief, Common Carrier Bureau Federal Communications Commission 1919 M Street, N.W., Rm. 500 Washington, D.C. 20554	FEDERAL COMMUNICATIONS COMMISSION
Mr. Jonathan E. Canis Ms. Dana Frix Swidler & Berlin Chartered 3000 K Street, N.W., Ste. 300 Washington, D.C. 20007-5116	JONES LIGHTWAVE, LTD.
Mr. Don Sussman Regulatory Analyst MCI Telecommunications Corp. 1801 Pennsylvania Ave., N.W. Washington, D.C. 20006	MCI TELECOMMUNICATIONS CORP.